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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

DINH, DUC Q

ART UNIT	PAPER NUMBER
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2629

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/965,963

Applicant(s)

REBH, RICHARD G.

Examiner

DUC Q. DINH

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 75,78-86 and 88-96 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 75,78-86 and 88-96 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is response to the Applicant's Amendment filed on October 20, 2006. Claims 75- 78-86, 88-96 are pending in the Application. Claims 75, 80, 86, 88, 89 and 92 are currently amended and claims 93-96 are newly added.

Claim Rejections - 35 USC § 112

2. Claims 79, 80, 85 and 92 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the original disclosure for the newly added limitation "the first signal is generated when the (*touch-activated*) sensor (*see claim 75 and 79*) is not actuated by the consumer and the second signal is generated when the (*touch-activated*) sensor is actuated by the consumer". The specification, specifically, page 16, lines 9-16, only discloses the system is response to the *motion* sensor to generate first and second sounds.

The examiner, examines the application based on best understood of the claimed language.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "the first signal is generated when the sensor is not actuated by the consumer and the second signal is generated when the (*touch-activated*) sensor is actuated by the consumer" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 75 and 78 and 81-82 and 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lam et al. (U.S Patent No. 5,032,716), hereinafter Lam in view of Gillespie (U.S Patent No. 6,250,001) and further in view of Blotky et al. (U.S Patent No. 6,762,734), hereinafter Blotky.

In reference to claim 75, Lam discloses an apparatus (Fig. 1-3) for advertising comprising: an output device (20) for disposing proximally to the product (24) for generating sound; a sensor (21 in Fig. 2) for disposing proximally to the product (24) such that the sensor can be actuated proximally to the product (24); a memory (32) comprising instruction for generating sound from the output device; a controller (34) in electrical connection with the output device (20), the sensor (21) and the memory (32) the controller executing the memory instructions (in memory 32) in response to a signal generated by the sensor (31) [col. 7, lines 25-41].

Accordingly, Lam discloses everything except a floor display that conveys marketing information for a product that is proximal to the floor display.

Gillespie discloses a floor display that conveys marketing information for a product that is proximal to the floor display (col. 1, lines 22-31).

It would have been obvious for one of ordinary skill in the art at the time of the invention to recognize the concept of using a floor display that conveys marketing information for a product that is proximal to the display as taught by Gillespie is well known and widely accepted as an enhancement to a retail store for increasing sale of production (col. 1, lines 21-29 of Gillespie).

The combination of Lam and Gillespie does not disclose the sensor is an activated sensor that can be selectively actuated by a consumer based on the consumer's interest in the product. Blotky discloses the touch activated sensors 56 and 54 such that sensors can be selectively actuated by a consumer based on the consumer's interest in the product. (Fig.5; col. 4; lines 21-47).

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the sensor of the combination of Lam and Gillespie as touch-activated sensor as taught by Blotkey because it would provide a dynamic advertised system that could provide further information about the product to customers. (col. 4, lines 25-26 and 38-42)

In reference to claim 78, Long discloses the controller executes the instructions for generating the first sound output in response to a first signal from the sensor and executes the instructions for generating the second sound output in response to a second signal from the sensor (col. 4, lines 66-67).

In reference to claim 81, Lam discloses the output device is at least one speaker (20).

In reference to claim 82, Lam discloses the battery is used for providing direct current for the controller (col. 2, lines 20-22).

In reference to claim 91, Lam discloses programming means 40 for inputting new instruction into the memory device (32) [see col. 3, line 54 – col. 4, line 25].

6. Claims 79 and 93-96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lam et al. (U.S Patent No. 5,032,716), hereinafter Lam in view of Gillespie (U.S Patent No. 6,250,001) and Blotky as applied to Claims 75 and 78 and 81-82 and 91-92 and further in view of Long (U.S Patent No. U.S Patent No. 5,793,281).

In reference to claim 79, the combination of Lam and Gillespie and Blotky does not disclose the controller executes the instructions for generating a first sound output in response to a first signal from the sensor and executes the instruction for generating the second sound output signal in response to a second signal from the sensor.

Long discloses a method and apparatus for point of sale promotional announcement having the controller executes the instructions for generating a first sound output in response to a first signal from the sensor and executes the instruction for generating the second sound output signal in response to a second signal from the sensor (col. 4, lines 55-67).

It would have been obvious for one of ordinary skill in the art at the time of the invention to learn the teaching of Long, i.e. using the controller to generate different sounds for different input from the sensor, in the combination of Lam, Gillespie and Blotky for providing different commercial messages to attract customer to the promotional products.

In reference to claims 93-96, refer to the rejection as applied to claim 79. In addition, Long discloses a process memory message (26) of the message device (22) comprise a set of instruction for generating a plurality of sounds in response to the signal generated by the sensor and the controller 24 comprising a clock (col. 3, lines 63-68) for executing a set of instruction for generating a second sound based on the time indicated by the controller (Figs. 2-3; col. 3, line 18 through col. 4, lines 4)

7. Claims 80 and 83-86 and 88-90 and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lam and Gillespie and Blotky in view of Long as applied to claims 75 and 78 and 81-82, 91, and further in view of Giraud (U.S Patent No. 5,966,696).

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In reference to claim 80, the combination of Lam, Gillespie and Blotky and Long does not disclose the first signal being generated when the sensor does not sense motion and the second signal being generated when the sensor senses motion. Blotky discloses the system is generated a first signal when the touch sensor is not activated and the second signal is generated when the touch activated sensor is activated. Giraud discloses a system for tracking consumer exposure for advertising. The system functions in either one of an idle mode when the potential consumer are not within a sensed proximity range or zone, i.e.: the sensor does not sense motion, and an active mode, i.e.: when sensor senses motion, to provide first signal and second signal for provide different advertising messages (col. 4, lines 13-20).

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the combination of Long and Gillespie and Blotky and Long to generate first signal when the sensor does not sense motion and second signal when the sensor senses motion as taught by Giraud because it would provide different control signals for appropriate advertising messages to consumers for increasing sales of the advertised products.

In reference to claim 83, the combination of Long and Gillespie and Blotky and Long does not disclose the floor display is illuminated. Giraud discloses the display system for exposing, i.e.: illuminating, to a number of different advertisements or promotion segments (col. 3, lines 29-35).

It would have been obvious for one of ordinary skill in the art at the time of the invention to modify the display of the combination of Long and Gillespie to for display to a number of

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different advertisements or promotion segment because it would provide an display system attracting customers with multiple advertising messages to increase sales.

In reference to claims 84-85, Giraud discloses memory 36 for storing instructions for information instructions for displaying different patterns according to the signals from the sensor (col. 4, lines 13-34).

In reference to claim 86, refer to the rejection as applied to claim 80.

In reference to claim 89, Long discloses the sensor may consist of other known traffic sensing devices such as floor mats (col. 2, lines 45-47).

In reference to claim 90, Giraud discloses the LCD is rectangular (Fig. 2).

In reference to claim 92, refer to the rejections as applied to claims 75. Accordingly, the combination of Lam, Gillespie discloses everything except an input device for inputting new memory instructions into the memory for storage, the input device being electrical communication with the controller. Blotky discloses to improve the dynamic of the display sound or other data may be transferred between the device and external source. The transfer of data may be automatic or it may be triggered, for example by an appropriate sensor such as sensors 52, 54, 56 or by activating another switch provided for this purpose. The addition of the external interface could serve multiple purposes. For example, a user can generate an image or sound file on his computer (not shown), or download it, for example from the Internet, and then transmit it to the microprocessor 44 via interface 62. The interface 62 can then store this file in the memory 46. Similarly, data could be transferred from the container 10 to an external source

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62 in response to an advertisement displayed on the container 10 activated by an appropriate sensor such as the stress sensor 54.

It would have been obvious for one of ordinary skill in the art at the time of the invention to provide the input device for transfer data between the advertising system and the external source and store new data into the system memory in the combination of Lam, Gillespie, Long and Giraud as taught by Blotky to improve the dynamic nature of the advertising system (col. 3, lines 31-35 of Blotky).

Response to Arguments

8. Applicant's arguments with respect to claims 75-96 have been considered but are moot in view of the new ground(s) of rejection. With respect to Applicant's Argument with the Amended claim 75 (pages 7-9 of the Remarks) Blotky discloses a touch activated sensor selectively actuated by customer as discussed above.

9. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to combine the references of Lam, Gillespie, Blotky and Giraud because they are related to the advertised system to increase the sale product to improve the dynamic nature of the advertising system as discussed above.

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The rejection is maintained.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DUC Q. DINH whose telephone number is (571) 272-7686. The examiner can normally be reached on Mon-Fri from 8:00.AM-4:00.PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, RICHARD HJERPE can be reached on (571) 272-7603. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DUC Q DINH
Examiner
Art Unit 2629

DQD
December 27, 2006



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SUPERVISORY PATENT EXAMINER
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